



## CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 22, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0133

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001-POL 6. Employees May Use Discretion	Not Sustained - Lawful and Proper
# 2	5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional	Not Sustained - Unfounded

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 (NE#1), a sergeant, used unreasonable discretion and was unprofessional for not investigating his case.

### **ADMINISTRATIVE NOTE:**

On August 11, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

The Complainant called 9-1-1 on March 7, 2023, to report that his girlfriend (Community Member #1 or CM#1) was carjacked. Officers responded but could not locate the Complainant or CM#1. The next day, the Complainant and CM#1 contacted 9-1-1 to report that CM#1 located her car but was kidnapped and assaulted by the people who stole it. Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) responded and conducted a primary investigation. The Complainant contacted OPA and alleged that WO#1 and WO#2 were unprofessional and conducted an inadequate primary investigation because they were biased against CM#1. OPA investigated that complaint under 2023OPA-0112 and determined it was unfounded.

During the intake for 2023OPA-0112, the Complainant alleged NE#1 used unreasonable discretion and was unprofessional for not assigning a follow-up unit to investigate CM#1's case. The Complainant alleged that SPD failed to follow up with CM#1 about the alleged kidnapping and assault despite having photographs of her injuries and the alleged suspects.

OPA opened a separate intake regarding the Complainant's allegations and determined the primary officer had forwarded this investigation to SPD's Homicide/Assault Unit, but NE#1 did not assign it for further investigation. OPA opened an investigation. During its investigation, OPA reviewed the OPA complaint, computer-aided dispatch call



reports, incident reports, Homicide/Assault Unit guidelines, and 2023OPA-0112. OPA also interviewed the Complainant and NE#1.

*A. Computer-Aided Dispatch (CAD) Call Report*

On March 7, 2023, at 8:10 PM, the Complainant called 9-1-1. CAD call remarks noted:

*"[REPORTING PARTY'S GIRLFRIEND] CARJACKED WHILE SHE WAS IN THE VEHICLE. SHE IS UPDATING HER LOCATION VIA FACEBOOK CURRENTLY TO [AN ADDRESS]. [UNKNOWN WEAPONS] INVOLVED. [GIRLFRIEND] MIGHT KNOW THE SUSPECTS, STORY IS SCATTERED."*

On March 8, 2023, at 8:51 PM, CM#1 called 9-1-1. CAD call remarks noted: "[INVESTIGATE] AUTO THEFT RELATED TO CARJACKING [ ] THAT [OCCURRED] 03/07 1830." CAD call remarks also noted that CM#1 did not meet officers on March 7<sup>th</sup>. Dispatch identified the registered owner of the car as incarcerated.

*B. Incident Report*

WO#1 wrote an incident report documenting the events of March 7-8<sup>th</sup>.

WO#1 wrote that on March 7, 2023, at 8:16 PM, officers responded to investigate a carjacking. According to the Complainant, CM#1 communicated to the Complainant via Facebook that four unknown men threw her in a car and dumped her elsewhere. The Complainant reported CM#1's location to officers. WO#1 wrote that officers searched that area—and where the carjacking occurred—but did not locate CM#1 or her car. The Complainant reported that CM#1 left the area on a bus. WO#1 wrote that officers advised the Complainant to have CM#1 call 9-1-1, but CM#1 never called. WO#1 wrote that officers attempted to meet the Complainant but could not find him. WO#1 wrote that officers could not locate CM#1 to corroborate the report.

WO#1 wrote that on March 8, 2023, at 9:32 PM, WO#1 met the Complainant and CM#1. WO#1 documented CM#1's account. CM#1 said on March 7<sup>th</sup>, someone stole her car with her dog inside. CM#1 said she and the Complainant found the car but did not see anyone inside due to a sunshade in the windshield. CM#1 said as she approached the car, four individuals—whom CM#1 knew—confronted and argued with her. CM#1 said one grabbed her, forcibly pulled her into the car, and drove off. CM#1 said she was held against her will for about two hours, assaulted multiple times, and beaten. CM#1 said she broke free, fled to her room, and did not call for help because her phone died. CM#1 said she did not report the kidnapping and assault on March 7<sup>th</sup> because she was afraid. CM#1 said she knew where the four individuals hung out.

WO#1 wrote that CM#1 said she owned the car but did not know her car's license plate number and could not produce proof of ownership. WO#1 also wrote that the car was not registered to CM#1.

WO#1 wrote that the Complainant corroborated CM#1's account. The Complainant said he drove CM#1 to her car and saw someone grab CM#1 and drive off. The Complainant said someone struck the Complainant's car while fleeing. The Complainant said he tried to report the incident on March 7<sup>th</sup> but could not contact officers.

In 2023OPA-0112, OPA reviewed WO#1 and WO#2's BWV and found them consistent with the incident report.



The case summary indicated it was assigned to the Homicide/Assault Unit for follow-up but “Not assigned” by NE#1.

*C. Homicide/Assault Unit Guidelines*

At his OPA interview, NE#1 provided the Homicide/Assault Unit’s guidelines (the Guidelines), written by a former lieutenant. The Guidelines outlined how cases were routed to the Homicide/Assault Unit, what cases were received by the Homicide/Assault Unit, and the sergeants’ rotation to assign cases. It also described the “standard practice” for prioritizing “File Cases”/ “felony bookings.”

The Guidelines also noted the unit’s “workload burden” and “*significant* discretion” for assigning cases. (Emphasis added). “File Cases” were assigned daily, “as there is a person being detained.” “Homicide and other significant cases” were assigned “regardless of workload.” For other cases, the Guidelines provided three considerations:

- 1) Solvability: Are there leads to follow up on?
- 2) Seriousness of the alleged crime: We generally avoid assigning misdemeanors for follow-up. It is our contention that the original investigating officers have the responsibility to complete misdemeanor investigations. However, there are exceptions.
- 3) Chargeability: Is the alleged victim actually a victim? Did he have some culpability? Are there self-defense issues? Is the victim likely to cooperate? Can the victim be located?

*D. OPA Interview – Complainant*

The Complainant was interviewed in OPA case 2023OPA-0112. The Complainant said CM#1 received no follow-up from SPD regarding her kidnapping and assault. The Complainant said CM#1 gave officers photos of her injury and the suspects, but nothing was done.

*E. OPA Interview – NE#1*

NE#1 described his process for assigning cases for follow-up investigation. NE#1 said that, on any given day, as many as sixty cases are marked for follow-up. NE#1 said felony, in-custody cases—that is, felony cases involving an arrested suspect—are the first priority. Next in priority, NE#1 said, were “work-up cases,” serious felonies without an arrestee. NE#1 said homicides were always assigned, as are “serious crimes[s], like a serious assault” when there is an “identified suspect.” However, cases like CM#1’s underwent a comparative process. NE#1 said, “I wouldn’t inactivate the case. I may let it hang for a day in the queue. Like, I may not assign it that day and just see kind of how the week progresses, and I may assign it later in the week.”

When asked why CM#1’s case was unassigned, NE#1 said:

*It didn’t read like a case that a detective could bring to a prosecutor’s office. . . . [W]hen I read this case, it looked like a case that a detective could spend forty hours working on and end up with no conclusion at all, no chance of sending anything forward to the prosecutor’s office. And I cannot justify assigning the case to a detective, because you have to understand, these detectives are not – they’re not “I’ll give it a fifty percent effort,” right? . . . [T]hese detective*



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*are all in on all the cases they get. So when you send them a case, they're going to take it all – to the max. And so, . . . when I looked at this case, it was so convoluted, and there were names in it that – they're monikers, there were names that are very common in parentheses in the report. Like, they're street names, right? . . . I couldn't justify sending that to a detective to let them spend two or three, four, five days on and then have nothing to show for it at the end. We're too busy for that.*

NE#1 and SPOG raised additional potential concerns, including CM#1's decision to confront the individuals she alleged stole her vehicle instead of calling the police, CM#1's delay in reporting her alleged kidnapping, and how those factors undermined whether CM#1 had an "articulable fear" of her alleged assailants.

NE#1 said cases are reexamined when new information is presented, but that was not the case here, and he had not heard from the Complainant or CM#1.

NE#1 said he does not always contact victims with unassigned cases. NE#1 said that was not "realistic" and it would be "just asking for trouble."

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001-POL 6. Employees May Use Discretion***

The Complainant alleged that NE#1 used unreasonable discretion by not assigning CM#1's case.

"Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." SPD Policy 5.001-POL-6. Further, "Discretion is proportional to the severity of the crime or public safety issue being addressed." *Id.*

An aspect of NE#1's job was to exercise discretion when assigning cases since resources were limited. NE#1 said his unit prioritized the most serious cases, including homicide and serious assaults. NE#1 noted that in-custody felonies were the highest priority, and homicides and serious assaults with identified suspects were assigned regardless of workload. After that, NE#1 described evaluating cases according to the factors outlined in the Guidelines.

CM#1 reported a carjacking, assault, and kidnapping. However, there were several unusual elements to CM#1's account, including delayed reporting, her suffering a "minor [chest] injury," and her not being the registered owner (or possessing proof of ownership) of the allegedly stolen car. Moreover, although CM#1 provided names for her four alleged assailants, one was a common name, and two were nicknames or common first names.

Accordingly, the Guidelines gave NE#1 "significant" discretion for assigning cases for follow-up investigation. NE#1 determined CM#1's case had a low probability of being solved and may have proof issues that preclude charging even if an arrest was made. Under the circumstances, NE#1's decision to allocate the limited resources to other cases was not unreasonable.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.



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Recommended Finding: **Not Sustained - Lawful and Proper**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional***

The Complainant alleged that NE#1 was unprofessional by not assigning CM#1's case and not contacting CM#1 about her case.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. *Id.*

As discussed above at Named Employee #1 - Allegation #1, NE#1 used reasonable discretion when he decided not to assign this case. Moreover, NE#1 was not required to contact listed victims in assigned cases.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**